

MINUTES
KENTUCKY BOARD OF PHARMACY
23 Millcreek Park
Frankfort, Kentucky
July 9, 2003

CALL TO ORDER: A regular meeting of the Kentucky Board of Pharmacy was held at the Board office, 23 Millcreek Park, in Frankfort, Kentucky. President Jones called the meeting to order at 9:00 a.m.

Members present: Georgina Kindall Jones, Tim Armstrong, Joe Carr, Mark Edwards, and Patricia Thornbury. Members absent: Becky Cooper. Staff present: Michael A. Moné, Executive Director; Jeffrey L. Osman, Pharmacy Inspections and Investigations Coordinator; Katie Busroe, Maxine Snively, and Philip C. Losch, Pharmacy and Drug Inspectors; Cheryl Lalonde-Mooney, Assistant Attorney General and Board Counsel and Shannon Settles, Executive Secretary. Guests: Danna Droz; Brian Fingerson, Pharmacist Recovery Network; Brian Lance, Meijer; Jan Gould, Kentucky Retail Federation; Nancy Horn, APSC; Ralph Bouvette, APSC; J.D. Hammond, APSC; Bob Barnett, APSC; and Paula York, Drug Control. Juanita Toole, Court Reporter, recorded the meeting.

APPEARANCES: **Gary Davis.** Mr. Davis appeared to petition for reinstatement of his pharmacist's license. Mr. Davis was placed under oath by Ms. Toole, Court Reporter. Mr. Davis gave a short overview of the cause leading to the loss of his pharmacist's license. Ms. Jones and Mr. Moné reviewed the recommendation of the Impaired Pharmacist Committee for reinstatement of license. Mr. Carr moved to reinstate with an Order of Reinstatement with stipulations as follows: Probation for ten (10) years; employment of no more than 40 hours per week or no more than 80 hours in a two-week period; provide a copy of Agreed Order to all employers; enter into a HELP contract; submission of a signed release for medical records; AA or NA no less than three (3) times per week; monthly random urine screens; not ingest any mood altering substance whether legend or nonlegend medication; not ingest alcoholic beverages; notification to the Board of all legend and nonlegend drugs taken within 10 days; shall keep Board informed of place of employment; Board or Board President's approval of all employers; obtain all prescriptions and those of family members at pharmacy designated in writing to the Board; shall not dispense any drugs for himself or his family members; and attendance at a Kentucky program on Alcoholism and other Drug Dependencies within one year. Order on Reinstatement to be drafted and forwarded to Mr. Davis for his signature and upon its return to be signed by President Jones. Mr. Armstrong seconded and the motion passed unanimously.

MINUTES: On motion by Mr. Edwards, seconded by Mr. Carr and passed unanimously, the Minutes of June 29, 2003 were adopted.

INTERAGENCY: **Drug Control.** Paula York introduced herself to the Board. Ms. York informed the Board that Mr. Dave Sallengs has been hired as Drug Control's Branch Manager.

BOARD REPORTS: **President.** President Jones gave an update of a slide presentation that she and Mr. Moné presented to the Prescription Drug Abuse Task Force.

Members. Joe Carr gave a brief overview of the University of Utah's School on Alcoholism and Other Drug Dependencies.

Executive Director. Mr. Moné presented the Board with request for approved CE from pharmacists who prepare and teach courses for technicians. Mr. Carr moved to approve the request for CE to be granted for hour per hour of teaching credit to be granted one time. Ms. Thornbury seconded and the motion passed unanimously.

Mr. Moné presented the FY04 out of state travel budget. Ms. Thornbury moved to amend the budget to include new Board members to attend the University of Utah School of Alcoholism and Other Drug Dependencies, Southeast PRN Conference or DEA conference. Mr. Carr seconded and the motion passed unanimously.

Mr. Moné presented the Board with the proposed 2004 Board examination dates of January 17, 2004 and June 19-20, 2004. The Board agreed to schedule the 2004 examination on those dates.

Mr. Moné discussed with the Board registration of pharmacy technicians, the public outreach of the Board through secret shopper and notice requirements and Internet renewal of licensure through the RAP program.

Mr. Moné further informed the Board of the Retreat November 8th - 9th at the Marriott Rivercenter in Covington.

CURRENT/PENDING CASES: Mr. Carr moved for acceptance and entry of the proposed Agreed Orders as written. Mr. Armstrong seconded and the motion passed unanimously. **Case No. 02-0146B; Case No. 03-0027; Case No. 03-0031; Case No. 03-0033, Case No. 03-0034; Case No. 03-0035; Case No. 03-0036A&B; Case No. 03-0042; Case No. 03-0045; Case No. 03-0046; Case No. 03-0052; Case No. 03-0053.**

Case Review Committee

Mr. Carr moved for acceptance of the Committee recommendation for the following case reports,

Case No. 02-0132. Pharmacist allegedly engaged in unprofessional conduct by dispensing non-controlled prescriptions to herself without authorization from a prescriber. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Armstrong seconded and the motion passed unanimously.

Case No. 02-0152. Pharmacist allegedly was indicted in Indiana for engaging in wrongful activities relating to compounding of legend drugs, including controlled substances. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Armstrong seconded and the motion passed unanimously.

Case No. 03-0012A. Pharmacy permit holder allegedly engaged in unprofessional conduct by committing a medication error by failing to provide prescribed quantity. CRC recommendation: There is insufficient evidence of a violation to warrant disciplinary action and the case is closed

without prejudice. Mr. Armstrong seconded and the motion passed unanimously.

Case No. 03-0012B. Pharmacist allegedly engaged in unprofessional conduct by committing a medication error by failing to provide prescribed quantity. CRC recommendation: There is insufficient evidence of a violation to warrant disciplinary action and the case is closed without prejudice. Mr. Armstrong seconded and the motion passed unanimously.

Case No. 03-0024. Continued from 04/03 CRC. Pharmacist allegedly engaged in unprofessional conduct by committing insurance fraud and allegedly failing to pay for prescriptions. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Armstrong seconded and the motion passed unanimously.

Case No. 03-0026A. Pharmacy permit holder allegedly engaged in unprofessional conduct by obtaining legend drugs from illegal sources. CRC recommendation: sufficient evidence developed and the investigator is directed to conduct further investigation. Mr. Armstrong seconded and the motion passed unanimously.

Case No. 03-0026B. Pharmacist allegedly engaged in unprofessional conduct by obtaining legend drugs from illegal sources. CRC recommendation: sufficient evidence developed and the investigator is directed to conduct further investigation. Mr. Armstrong seconded and the motion passed unanimously.

Case No. 03-0028. Florida Department of Health allegedly brought action against pharmacist for having in his possession legend drugs, including controlled substances without a valid prescription or authorization. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Armstrong seconded and the motion passed unanimously.

Case No. 03-0039. Out-of-state pharmacy allegedly dispensed legend drugs without proper authorization from prescriber. CRC recommendation: Case is dismissed. Mr. Armstrong seconded and the motion passed unanimously.

Case No. 03-0047A. Continued from 04/03 CRC. Pharmacy permit holder allegedly failed to maintain proper security of controlled substances; failed to maintain proper record keeping and documentation; and failed to secure floor stock. Permit holder also allegedly failed to have a pharmacist-in-charge that assured rational drug therapy, properly controlled and reviewed drug distribution, and dispensed controlled substances without authorization from a practitioner. Permit holder failed to have a pharmacist-in-charge for greater than 14 days. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Armstrong seconded and the motion passed unanimously.

Case No. 03-0047B. Continued from 04/03 CRC. Pharmacist-in-charge allegedly failed to maintain proper security of controlled substances, failed to maintain proper record keeping and documentation, failed to properly control and review drug distribution, failed to secure floor stock, failed to assure rational drug therapy, and dispensed controlled substances without authorization from a practitioner. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Armstrong seconded and the motion passed unanimously.

Case No. 03-0057. Permit holder allegedly failed to properly notify the Board office of a change in pharmacist-in-charge in a timely manner. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Armstrong seconded and the motion passed unanimously.

Case No. 03-0058A. Permit holder allegedly relocated pharmacy without proper notification to the Board office and a prior inspection. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Armstrong seconded and the motion passed unanimously.

Case No. 03-0058B. Pharmacist allegedly relocated pharmacy without proper notification to the Board office and a prior inspection. Pharmacist allegedly failed to complete and have pharmacy continuing education certified of completion by December 31, 2002. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Armstrong seconded and the motion passed unanimously.

Case No. 03-0059A. Permit holder allegedly relocated special medical gas pharmacy without proper notification to the Board office and a prior inspection. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Armstrong seconded and the motion passed unanimously.

Case No. 03-0059B. Pharmacist allegedly relocated special medical gas pharmacy without proper notification to the Board office and a prior inspection. CRC recommendation: There is insufficient evidence of a violation to warrant disciplinary action and the case is closed without prejudice. Mr. Armstrong seconded and the motion passed unanimously.

Case No. 03-0060A. Permit holder allegedly dispensed and charged for physician sample medications. CRC recommendation: Case is dismissed. Mr. Armstrong seconded and the motion passed unanimously.

Case No. 03-0060B. Pharmacist(s) allegedly dispensed and charged for physician sample medications. CRC recommendation: Case is dismissed. Mr. Armstrong seconded and the motion passed unanimously.

Case No. 03-0062A. Permit holder allegedly engaged in unprofessional conduct by following a differential pricing structure for cash prescriptions and those charged to an insurance company for automobile accidents. CRC recommendation: There is insufficient evidence of a violation to warrant disciplinary action and the case is closed without prejudice. Mr. Armstrong seconded and the motion passed unanimously.

Case No. 03-0062B. Pharmacist allegedly engaged in unprofessional conduct by following a differential pricing structure for cash prescriptions and those charged to an insurance company for automobile accidents. CRC recommendation: There is insufficient evidence of a violation to warrant disciplinary action and the case is closed without prejudice. Mr. Armstrong seconded and the motion passed unanimously.

Case No. 03-0062C. Permit holder allegedly engaged in unprofessional conduct by following a differential pricing structure for cash prescriptions and those charged to an insurance company for automobile accidents. CRC recommendation: There is insufficient evidence of a violation to warrant

disciplinary action and the case is closed without prejudice. Mr. Armstrong seconded and the motion passed unanimously.

Case No. 03-0062D. Pharmacist allegedly engaged in unprofessional conduct by following a differential pricing structure for cash prescriptions and those charged to an insurance company for automobile accidents. CRC recommendation: There is insufficient evidence of a violation to warrant disciplinary action and the case is closed without prejudice. Mr. Armstrong seconded and the motion passed unanimously.

Case No. 03-0063. Pharmacist allegedly failed to complete pharmacy continuing education requirements for 2002. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Armstrong seconded and the motion passed unanimously.

Case No. 03-0064. Special medical gas permit holder allegedly relocated without properly notifying the Board office and a prior inspection. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Armstrong seconded and the motion passed unanimously.

Case No. 03-0065A. Permit holder allegedly failed to provide proper security for controlled substances. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Armstrong seconded and the motion passed unanimously.

Case No. 03-0065B. Pharmacist allegedly failed to provide proper security for controlled substances. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Armstrong seconded and the motion passed unanimously.

Case No. 03-0066A. Permit holder allegedly violated the Health Insurance Portability and Accountability Act (HIPAA). CRC recommendation for Complaint with attempt to resolve through AO. Mr. Armstrong seconded and the motion passed unanimously.

Case No. 03-0066B. Pharmacist allegedly violated the Health Insurance Portability and Accountability Act (HIPAA). CRC recommendation: There is insufficient evidence of a violation to warrant disciplinary action and the case is closed without prejudice. Mr. Armstrong seconded and the motion passed unanimously.

Case No. 03-0067. Pharmacist allegedly failed to complete pharmacy continuing education requirements in 2002. CRC recommendation: Case is dismissed. Mr. Armstrong seconded and the motion passed unanimously.

Case No. 03-0068A. Permit holder allegedly refilled a non-controlled prescription without proper authorization from a physician. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Armstrong seconded and the motion passed unanimously.

Case No. 03-0068B. Pharmacist allegedly refilled a non-controlled prescription without proper authorization from a physician. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Armstrong seconded and the motion passed unanimously.

Case No. 03-0069. Special medical gas permit holder allegedly relocated without properly notifying the Board office and a prior inspection. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Armstrong seconded and the motion passed unanimously.

Case No. 03-0070. Pharmacist allegedly failed to complete pharmacy continuing education requirements for 2002. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Armstrong seconded and the motion passed unanimously.

Case No. 03-0071. Pharmacist allegedly was in possession of a controlled substance without a valid prescription or authorization. CRC recommendation: sufficient evidence developed and the investigator is directed to conduct further investigation. Mr. Armstrong seconded and the motion passed unanimously.

Case No. 03-0072. Pharmacist allegedly failed to complete pharmacy continuing education requirements for 2002. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Armstrong seconded and the motion passed unanimously.

Case No. 03-0073A. Permit holder allegedly failed to maintain proper records and security of its legend drugs, including controlled substances and allowing pharmacist-in-charge to practice pharmacy while impaired. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Armstrong seconded and the motion passed unanimously.

Case No. 03-0073B. Pharmacist allegedly failed to maintain proper records and security of its legend drugs, including controlled substances and practicing pharmacy while impaired. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Armstrong seconded and the motion passed unanimously.

Case No. 03-0074. Pharmacist allegedly engaged in unprofessional conduct by committing fraud. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Armstrong seconded and the motion passed unanimously.

Case No. 03-0075. Pharmacist allegedly failed to maintain proper security of legend drugs, including controlled substances and had in his possession legend drugs, including controlled substances without a valid prescription and required authorization. Pharmacist entered into Order with the Indiana Board of Pharmacy. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Armstrong seconded and the motion passed unanimously.

Case No. 03-0076A. Special medical gas permit holder allegedly relocated without proper notification to the Board office and a prior inspection. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Armstrong seconded and the motion passed unanimously.

Case No. 03-0076B. Pharmacist allegedly relocated special medical gas pharmacy without proper notification to the Board office and a prior inspection. CRC recommendation for Complaint with attempt to resolve through AO. Mr. Armstrong seconded and the motion passed unanimously.

CORRESPONDENCE: **Pharmerica/James Kilgus.** The Board reviewed correspondence

regarding long term pharmacy services and the authorization to allow automatic conversion of a non-formulary product to a formulary medication for all patients of a particular prescriber. After a brief discussion, Mr. Carr moved to authorize Mr. Moné to draft a letter stating that Pharmerica must follow current regulation concerning formulary compliance. Mr. Armstrong seconded and the motion passed unanimously.

CCA Medical/Dan Goodwin. The Board reviewed correspondence regarding faxing of a prescription containing an electronic signature. After a brief discussion, Ms. Thornbury moved to authorize Mr. Moné to draft a letter stating that CCA must follow current law. Mr. Carr seconded and the motion passed unanimously.

Keith Barnes. The Board reviewed correspondence regarding changing of work site. After a brief discussion, Mr. Edwards moved to approve the request. Mr. Carr seconded and the motion passed unanimously.

Corner HomeCare/Optioncare. The Board reviewed correspondence regarding dual pharmacist-in-charge. After a brief discussion, Mr. Edwards moved to approve the request. Mr. Carr seconded and the motion passed unanimously.

Crystal Adams. The Board reviewed correspondence regarding change in primary care physician. After a brief discussion, Mr. Carr moved to approve the request. Ms. Thornbury seconded and the motion passed unanimously.

Jim Boley. The Board reviewed correspondence regarding Mr. Boley's work site. After a brief discussion, Mr. Edwards moved to approve the request. Mr. Carr seconded and the motion passed unanimously.

California State Board of Pharmacy. The Board reviewed correspondence regarding a new California law regarding pharmacies that compound sterile injectable drugs that will be shipped into California.

Thomas Hoffman. The Board reviewed correspondence regarding additional hours and request to be POA and pharmacist-in-charge. After a brief discussion, Mr. Carr moved to approve the POA and pharmacist-in-charge at one of the two pharmacies owned by Mr. Timmons, and to approve additional work hours, however, this request is granted only for the period of vacations and can not exceed an additional 8 hours per week. Mr. Edwards seconded and the motion passed unanimously.

April Coleman. The Board reviewed correspondence regarding Ms. Coleman taking the MPJE. After a brief discussion, Mr. Edwards moved to ratify the decision of the President of the Board that resulted in the approval of her request. Mr. Carr seconded and the motion passed unanimously.

CONTINUING EDUCATION: Ms. Thornbury moved to accept the continuing education programs 03-27 through 03-29 as recommended. Mr. Edwards seconded and the motion passed unanimously.

ADJOURNMENT: On motion by Mr. Edwards and seconded by Mr. Carr and passed

unanimously, President Jones adjourned the meeting at 11:55 a.m. The next Board meeting is scheduled to begin at 9:00 a.m. on August 13, 2003.

Michael A. Moné, Executive Director

MINUTES APPROVED August 13, 2003.